

***NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 02-111-11
JULY 28, 2004***

***Protected Resources Management
Section 6 Agreements***

***COOPERATIVE AGREEMENT BETWEEN NMFS AND THE NEW JERSEY DEPT.
OF ENVIRONMENTAL PROTECTION, DIVISION OF FISH AND WILDLIFE FOR
THE CONSERVATION OF ENDANGERED AND THREATENED SPECIES***

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SUMMARY OF REVISIONS:

/s/ 12/19/05

Signed _____
James H. Lecky Date
Director, Office of Protected Resources

Limited Cooperative Agreement Between the
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
and the New Jersey Department of Environmental Protection
Division of Fish and Wildlife
for the Conservation of Endangered and Threatened Species

This limited cooperative agreement is entered into pursuant to Section 6(c)(1) of the Endangered Species Act of 1973, as amended (hereinafter referred to as "the Act"), and the New Jersey Endangered and Nongame Species Conservation Act (N.J.S.A. 23:2A) between the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the New Jersey Department of Environmental Protection, Division of Fish and Wildlife. Hereinafter, the parties shall be referred to as NMFS and NJDFW, respectively. All terms contained herein shall be given the same meaning as defined at 50 C.F.R. Section 222.102.

Whereas, the Act authorizes the Secretary of Commerce (hereinafter referred to as "the Secretary") to enter into cooperative agreements in accordance with Section 6 with states that establish and maintain adequate and active programs for the conservation of endangered and threatened species;

Whereas, the state is authorized pursuant to the New Jersey Endangered and Nongame Species Conservation Act to enter into agreements with federal agencies to conserve resident fish and wildlife species;

Whereas, the state of New Jersey has the authority to establish conservation programs consistent with the purposes and policies of the Act for the following species of fish and wildlife occurring in the state which have been deemed by the Secretary to be endangered or threatened and under the jurisdiction of NMFS:

Endangered Species

North Atlantic right whale (*Eubalaena glacialis*)

Humpback whale (*Megaptera novaeangliae*)

Fin whale (*Balaenoptera physalus*)

Shortnose sturgeon (*Acipenser brevirostrum*)

Hawksbill turtle (*Eretmochelys imbricata*)

Leatherback turtle (*Dermochelys coriacea*)

Kemp's ridley turtle (*Lepidochelys kempii*)

Threatened Species

Loggerhead turtle (*Caretta caretta*)

Green turtle (*Chelonia mydas*) [Green turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific Coast of Mexico, which are listed as endangered.]

Whereas, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set for in Section 2(a) of the Act;

Whereas, the Secretary has delegated to the Assistant Administrator for Fisheries of NMFS the authority to enter into cooperative agreements with states for the purpose of supporting programs for endangered and threatened species conservation;

Whereas, the Act requires the Secretary to determine that the state agency: (1) is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife; (2) is authorized to establish conservation programs, including the acquisition of land, aquatic habitat, or interests therein, for the conservation of resident endangered or threatened species of fish and wildlife listed in this agreement; (3) has made provision for public participation in designating resident species of fish and wildlife as endangered or threatened; (4) will give immediate attention to the species listed in this agreement which are determined by NMFS and NJDFW to be most urgently in need of conservation programs;

Whereas, NMFS hereby determines that NJDFW satisfies the Act's legal requirements for such cooperative agreements as specified in the immediately preceding paragraph;

Whereas, the parties to this agreement are in accord that the programs administered in New Jersey are designed to conserve resident endangered and threatened species, and that it is the mutual desire of NJDFW and NMFS to cooperate for the common purpose of planning, developing, and conducting programs to protect, manage, and enhance populations of all resident endangered and threatened species covered by this agreement within the State of New Jersey;

Whereas, the Assistant Administrator for Fisheries of NMFS has the administrative authority to establish programs for the conservation of endangered and threatened species; to provide periodic review of the state program at no greater than annual intervals; to provide funding for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of various states; and to exchange with states such biological data or other information that may result in the continued conservation of endangered or threatened species;

Whereas, the Assistant Administrator for Fisheries of NMFS authorizes the Northeast Regional Administrator of NMFS to monitor the implementation of this cooperative agreement;

Therefore the parties agree as follows:

1. Consistent with Section 6(d) of the Act, NMFS may provide financial assistance to NJDFW for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species. Such projects will be developed jointly by NMFS and NJDFW in accordance with the Act, and shall be explained in an appendix to this agreement.

2. NMFS and NJDFW will carry out the cooperative program for the conservation of endangered and threatened species, which may involve law enforcement, research, management, and public information and education activities conducted for the benefit of resident endangered and threatened species in the State of New Jersey.

3. Pursuant to Section 6(c)(1)(E)(ii) of the Act, entry into this agreement shall in no way affect the applicability of the prohibitions set forth in or authorized pursuant to Section 4(d) and Section 9 of the Act with respect to the taking of any resident endangered or threatened species of fish or wildlife.

4. Effective Date and Renewal

(a) This agreement shall become effective when signed by the Assistant Administrator for Fisheries of NMFS and the Director of NJDFW, and may be renewed in the following manner: Not later than June 30 each year, NJDFW will submit to the Assistant Administrator for Fisheries of NMFS the following: (1) the current list of the state listed resident endangered and threatened fish and wildlife within the jurisdiction of NMFS and a description of all changes to such list since the date of the previous submission of the list to NMFS; (2) a certification of any amendments in NJDFW's legal authority or regulatory programs for endangered and threatened fish and wildlife that were made since the date of the previous submission of the program to NMFS; (3) a list of all changes in the endangered and threatened species conservation programs since the date of the previous submission of the program to NMFS; (4) a report on the status of all projects funded pursuant to paragraph one of this agreement; and (5) any additional information requested by the Assistant Administrator for Fisheries of NMFS that pertains to NJDFW's program for the conservation of endangered and threatened fish and wildlife;

(b) The Assistant Administrator for Fisheries of NMFS will, on or before October 1 of each year, notify NJDFW in writing whether the cooperative agreement is renewed effective October 1 of that year, or that the state's program or authorities are no longer in compliance with the criteria of Section 6(c) of the Act, and unless appropriate changes are made by June 30 of the following year, this agreement shall be terminated. If NJDFW, after satisfying the renewal provisions of the immediately preceding paragraph, has not received notification concerning the renewal of this agreement by October


1 of each year, the agreement shall continue in force and effect as if it had been renewed.

5. Amendment

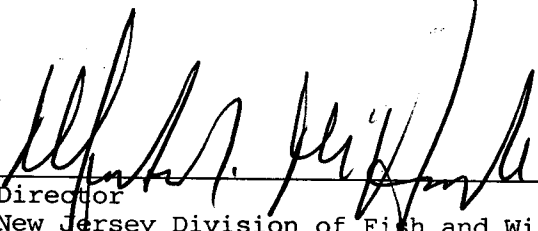
This agreement may be amended at any time with the written concurrence of the signatories.

6. Termination

This agreement may be terminated: (a) by mutual agreement; (b) by NJDFW upon 60 days written notice to the Assistant Administrator for Fisheries of NMFS; or (c) notwithstanding the renewal provisions in Section 4(b) of this cooperative agreement, by NMFS upon 60 days notice to NJDFW from the Assistant Administrator for Fisheries of NMFS, stating reasons why the state's conservation program for endangered and threatened species is no longer in compliance with the criteria in Section 6(c) of the Act, or that the state has otherwise violated provisions of this agreement. NJDFW may submit a written request for review to the Secretary within 30 days of the receipt of the termination notice. The Secretary will consider all evidence submitted by NJDFW in its request for review, and either reaffirm the termination of this agreement at the end of the 60 day notification period, or reverse the determination of the Assistant Administrator of NMFS and revoke the notice of termination.


for Assistant Administrator for Fisheries
National Marine Fisheries Service

7-6-04
Date


Director
New Jersey Division of Fish and Wildlife

7/28/04
Date

Appendix I

ENDANGERED SPECIES ACT SECTION 6 PROJECT AUTHORITY

Submitted by the State of New Jersey Division of Fish and Wildlife

1. Date: 2004
2. Species: North Atlantic right whale (*Eubalaena glacialis*)
3. State: New Jersey
4. Project Description:

The State of New Jersey Division of Fish and Wildlife's Endangered and Nongame Species Program will develop a management plan for the protection and conservation of the critically endangered North Atlantic right whale (*Eubalaena glacialis*) in New Jersey state waters. The conservation plan will outline recovery goals and steps that will be taken to achieve these goals. Some of these steps include assessing the distribution and abundance of right whales in New Jersey waters and providing education and outreach to both fishermen and mariners about how they can actively participate in reducing serious injury and mortality to right whales. Contingent upon funding, New Jersey may expand this management plan to include the other resident endangered and threatened marine species covered by this cooperative agreement.